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PATENT
Attorney Docket No.: 020489-000410US

TOWNSEND and TOWNSEND and CREW LLP

By: 

Tiffany Wu

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Eric A. Goldfarb

Application No.: 10/803,444

Filed: March 17, 2004

For: METHODS AND DEVICES FOR
CAPTURING AND FIXING LEAFLETS
IN VALVE REPAIR

Customer No.: 76081

Confirmation No.: 5450

Examiner: WOO, JULIAN W

Art Unit: 3773

REQUEST FOR RECONSIDERATION OF
PATENT TERM ADJUSTMENT
DETERMINATION

Mail Stop Issue Fee
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant to 37 C.F.R. § 1.705(b), Applicants respectfully request reconsideration of the patent term adjustment determination. This request is accompanied by the fee set forth in §1.18(e) and a statement of facts as required under 37 C.F.R. § 1.705(b)(2).

Statement of Facts

Correct Patent Term Adjustment and Bases Under §§ 1.702, 1.703, and 1.704 for the Adjustment

The correct patent term adjustment is 687 days, not 527 days as stated on the Determination of Patent Term Adjustment under 35 U.S.C. § 154(b) mailed on February 10, 2009.

The period of adjustment under 37 C.F.R. § 1.702(a) is 554 days ("A delay").

The period of adjustment under 37 C.F.R. § 1.702(b) is to be determined when the instant application issues. The effective period of adjustment as of the mailing date of the Notice of Allowance under 37 C.F.R. § 1.702(b) is 160 days (“B delay”).

The period of overlapping days over the period of adjustments under 37 C.F.R. §§ 1.703(a)-(e) is 0 days.

The period adjustment under 37 C.F.R. § 1.704(a) is 27 days (“applicant delay”).

The relevant dates as specified in 37 C.F.R. §§ 1.703(a)-(e) &
the adjustment specified in 37 C.F.R. § 1.703(f)

1. § 1.703(a)

Applicants are in agreement with the USPTO determination of a period of adjustment of 554 days under 37 C.F.R. § 1.703(a). (*See* Exhibit A, attached hereto).

Applicants respectfully request an additional period of adjustment equal to the number of days, if any, in the period beginning on the day after the date that is four months after the date the issue fee was paid, March 3, 2009, and all outstanding requirements were satisfied and ending on the date the patent was issued. *See* 37 C.F.R. § 1.703(a)(6).

2. § 1.703(b)

The period of adjustment under 37 C.F.R. § 1.702(b) begins on the day after the date that is three years from the filing date of the instant application, March 17, 2007, and ends on the day the patent is issued.

The period of adjustment does not include the period beginning on the date on which an RCE was filed, August 24, 2007. *See* 37 C.F.R. § 1.703(b)(1).

Thus, the effective period of adjustment under 37 C.F.R. § 1.702(b) is 160 days, *i.e.*, from March 17, 2007 to August 24, 2007.

3. § 1.703(c)-(e)

There are no relevant dates as specified under §§ 1.703(c)-(e).

4. Calculation of Overlapping Days under § 1.703(f)

There are no overlapping periods under §§ 1.703(a)-(e).

Applicants request that overlapping periods be determined in accordance with *Wyeth v. Dudas* (Case No. 07-1492, D.D.C. 2008). The periods of delay under 35 U.S.C. §154(b)(1)(A) and 35 U.S.C. §154(b)(1)(B) overlap only if they occur on the same calendar day or days.

As discussed above, Applicants respectfully request an additional period of adjustment equal to the number of days, if any, under 37 C.F.R. § 1.703(a)(6). Any such period of adjustment under 37 C.F.R. § 1.703(a)(6) begins on March 3, 2009 will not overlap with a period of adjustment under 37 C.F.R. § 1.702(b) which does not include the period beginning on August 24, 2007.

Reduction of period of adjustment of patent term under 37 C.F.R. §1.704

Application are in agreement with the U.S. Patent and Trademark Office determination of an adjustment of 27 days under 37 C.F.R. § 1.704(a).

Patent Term Adjustment Determination

Applicants are entitled to 687 days of patent term adjustment, *i.e.*,
[(A delay (554 days) + B delay (160 days) – overlap (0 days)) minus [27 days (applicant delay)]
under 37 C.F.R. § 1.703(f). Applicants are also entitled to any period of adjustment under 37 C.F.R. § 1.703(a)(6).

Terminal disclaimer


No terminal disclaimer has been filed.

Please charge the fee set forth in 37 C.F.R. §1.18(e) (\$200.00) to Deposit Order Account No. 20-1430. Please charge any necessary additional fees or credit any overpayments to our Deposit Order Account No. 20-1430.

Based on the foregoing, Applicants respectfully request reconsideration of the patent term adjustment determination.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 650-326-2400.

Respectfully submitted,



Douglas Portnow
Reg. No. 59,660

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Attachment: Exhibit A (2 pages)

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EXHIBIT A

10/803,444	METHODS AND DEVICES FOR CAPTURING AND FIXING LEAFLETS IN VALVE REPAIR	03-03-2009::16:03:51
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Patent Term Adjustments

Patent Term Adjustment (PTA) for Application Number: 10/803,444

Filing or 371(c) Date:	03-17-2004	USPTO Delay (PTO) Delay (days):	554
Issue Date of Patent:	-	Three Years:	-
Pre-Issue Petitions (days):	+0	Applicant Delay (APPL) Delay (days):	27
Post-Issue Petitions (days):	+0	Total PTA (days):	527
USPTO Adjustment(days):	+0	Explanation Of Calculations	

Patent Term Adjustment History

Date	Contents Description	PTO(Days)	APPL(Days)
02-10-2009	Mail Notice of Allowance		
02-10-2009	Document Verification		
02-10-2009	Notice of Allowance Data Verification Completed		
02-10-2009	Case Docketed to Examiner in GAU		
02-10-2009	Examiner's Amendment Communication		
02-05-2009	Examiner Interview Summary Record (PTOL - 413)		
12-01-2008	Date Forwarded to Examiner		
11-03-2008	Response after Non-Final Action		
09-15-2008	Mail Non-Final Rejection		
09-12-2008	Non-Final Rejection		
06-19-2008	Information Disclosure Statement considered		
06-19-2008	Information Disclosure Statement (IDS) Filed		
06-26-2008	Date Forwarded to Examiner		
06-26-2008	Date Forwarded to Examiner		
06-10-2008	Request for Continued Examination (RCE)		
06-26-2008	DISPOSAL FOR A RCE/CPA/129 (express abandonment if CPA)		
06-19-2008	Information Disclosure Statement (IDS) Filed		
06-10-2008	Workflow - Request for RCE - Begin		
05-22-2008	Mail Final Rejection (PTOL - 326)		
05-21-2008	Final Rejection		
02-04-2008	Miscellaneous Incoming Letter		
03-13-2008	Date Forwarded to Examiner		
02-04-2008	Response after Non-Final Action		
01-30-2008	Mail Examiner Interview Summary (PTOL - 413)		
03-08-2007	Examiner Interview Summary Record (PTOL - 413)		
12-12-2007	Correspondence Address Change		
11-21-2007	Mail Non-Final Rejection		
11-20-2007	Non-Final Rejection		
11-20-2007	Case Docketed to Examiner in GAU		
09-06-2007	Date Forwarded to Examiner		

08-24-2007	Request for Continued Examination (RCE)	16
09-06-2007	DISPOSAL FOR A RCE/CPA/129 (express abandonment if CPA)	✦
08-24-2007	Request for Extension of Time - Granted	✦
08-24-2007	Workflow - Request for RCE - Begin	✦
08-14-2007	Mail Advisory Action (PTOL - 303)	✦
08-09-2007	Advisory Action (PTOL-303)	✦
07-30-2007	Date Forwarded to Examiner	✦
07-27-2007	Amendment after Final Rejection	✦
05-08-2007	Mail Final Rejection (PTOL - 326)	✦
05-08-2007	Final Rejection	
12-29-2006	Information Disclosure Statement considered	
03-10-2007	Date Forwarded to Examiner	
03-05-2007	Response after Non-Final Action	11
03-05-2007	Request for Extension of Time - Granted	✦
12-29-2006	Electronic Information Disclosure Statement	✦
12-29-2006	Information Disclosure Statement (IDS) Filed	✦
11-22-2006	Mail Non-Final Rejection	554
11-20-2006	Non-Final Rejection	✦
05-03-2004	Information Disclosure Statement considered	✦
02-02-2006	Information Disclosure Statement considered	✦
02-02-2006	Reference capture on IDS	✦
02-02-2006	Information Disclosure Statement (IDS) Filed	✦
02-02-2006	Information Disclosure Statement (IDS) Filed	✦
10-26-2004	IFW TSS Processing by Tech Center Complete	✦
05-03-2004	Reference capture on IDS	✦
05-03-2004	Information Disclosure Statement (IDS) Filed	✦
05-03-2004	Information Disclosure Statement (IDS) Filed	✦
10-26-2004	Case Docketed to Examiner in GAU	✦
06-02-2004	Application Return from OIPE	✦
06-02-2004	Application Return TO OIPE	✦
06-02-2004	Application Dispatched from OIPE	✦
06-02-2004	Application Is Now Complete	✦
04-16-2004	Cleared by OIPE CSR	✦
04-14-2004	IFW Scan & PACR Auto Security Review	✦
03-17-2004	Initial Exam Team nn	✦

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